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PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appl. No.: 09/991,428  
Applicant(s): Awaida  
Filed: Nov. 16, 2001  
Art Unit: 3639  
Examiner: Erb, Nathan

Confirmation No.: 4148  
Docket No.: 018360/291656

Title: SYSTEM AND METHOD FOR CALCULATING REAL-TIME  
COSTING INFORMATION

Docket No.: 018360/291656  
Customer No.: 00826

Mail Stop Amendment  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

DECLARATION UNDER 37 C.F.R. § 1.132

Sir:

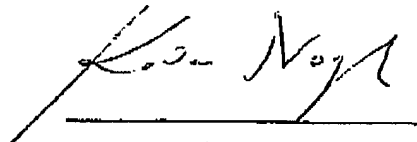
I, Nagesh Kadaba, do hereby declare and aver the following:

1. I am currently an employee of UPS, the assignee of the present application. I have been employed by UPS for 17 year and am generally familiar with various logistical aspects of domestic and international shipping.
2. My education background is Ph.D. in Computer Science and Operations Research.
3. I have read U.S. Patent 5,878,400, to Carter, entitled "Method and Apparatus for Pricing Products in Multi-Level Product and Organizational Groups." In particular, I have noted Figures 4B, Figure 5, col. 8, line 35 through col. 9, line 2, col. 9, lines 40 through col. 10, line 21, and claims 31, 32, and 37 of the patent.

4. I have read the U.S. Patent Office Action ("Office Action") for U.S. Patent Application No. 09/991,428. In particular, I have reviewed the allegations made on page 6, that the U.S. Patent 5,878,400 ("Carter") discloses "a tree having a hierarchy of nodes in which goods can be classified (Fig. 4b; the tree being an HS tree ...)" (Office Action, p. 6) and which refers to the portions of the Carter patent indicated in paragraph #3 above. I have also reviewed the allegation that the Carter reference discloses "a tariffs module for storing information describing tariffs applicable to goods classified in nodes of the tree." (Office Action, p. 6). I understand the Office Action as alleging that Figure 4B of Carter discloses a hierarchical tree structure consistent with the harmonization tariff schedule for classification of goods.
5. One definition of a harmonized tariff schedule is provided at the following U.S. Government web site: <http://www.usitc.gov/tata/index.htm>, and states:  
  
The Harmonized Tariff Schedule of the United States (HTS) was enacted by Congress and made effective on January 1, 1989, replacing the former Tariff Schedules of the United States.  
  
The HTS comprises a hierarchical structure for describing all goods in trade for duty, quota, and statistical purposes. This structure is based upon the International Harmonized Commodity Description and Coding System (HS), administered by the World Customs Organization in Brussels; the 4- and 6-digit HS product categories are subdivided into 8-digit unique U.S. rate lines and 10-digit non-legal statistical reporting categories. Classification of goods in this system must be done in accordance with the General and Additional U.S. Rules of Interpretation, starting at the 4-digit heading level to find the most specific provision and then moving to the subordinate categories.
6. I do not consider Figure 4B of the Carter reference to be a graphical tree structure depicting a harmonized tariff schedule. First, Figure 4B includes classification for non-products, e.g., services, such as "support" and "maintenance." The harmonized tariff classification scheme only classifies goods, not services. Consequently, the inclusion of the classification of services is inconsistent with representation of a harmonized tariff schedule.
7. Further, the specification of the Carter reference describing Figure 4B states "the particular grouping of various products is entirely arbitrary and determined by the user of the invention's pricing system." (Col. 7, line 63-65.) A harmonized tariff

coding schedule for grouping products is not arbitrary, nor is it determined by the user. It is determined by the government and its classification can be only changed by the government.

8. A key function of the harmonization tariff schedule is to allow the user to determine the appropriate harmonized tariff code. As described above, the HS code number defines the respective good's most appropriate classification in the HTS. I do not see any associated harmonized tariff code indicated in Fig. 4B, nor indicated in the specification of the Carter reference. For at least these reasons, I do not consider Figure 4B to represent a harmonization tariff classification scheme.
9. Another function of the harmonization tariff classification scheme is that it is used to aid in determining the associated duty associated with importation of the good. My understanding is that the tax referenced in the Carter reference is a sales tax, as indicated in column 11, line 5 of the Carter reference. A sales tax is not a duty. A duty is a charge levied by a government for the importation of a good. A sales tax is a charge levied by the government for the sale of a good. The sale of a good is separate from the importation of a good. In international trade, these are considered separate charges. One skilled in the art of international trade would consider a sales tax separate from a duty.
10. I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.



Nagesh Kadaba, Ph.D.

10/3/06

Date